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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GILBERTO CARRILLO,

Plaintiff,

vs.

DOUGLAS GILLESPIE, et al.,

Defendants.

2:12-cv-02165-JCM-VCF

ORDER

12 Before the court is *pro se* Plaintiff Gilberto Carrillo's (1) Motion for Council(sic) and
13 Investigator/Consultant (#60), (2) Motion for Identification, and Issuance of Summons, for the Unserved
14 Defendants (#61), and (3) Motion to Serve Defendants' Complaint/Amended Complaint and Summons
15 to K. Bussell and Dwain Cotwright (#68).

16 **I. Relevant Background**

17 Plaintiff filed a 42 U.S.C. § 1983 civil rights complaint in the Eighth Judicial District Court,
18 Clark County, Nevada, on September 5, 2012. (#1). Defendants removed the action to this court on
19 December 19, 2012, asserting Federal Question jurisdiction under 28 U.S.C. §§ 1331 and 1441(b). *Id.*
20 On December 27, 2012, defendants filed a Motion to Dismiss. (#'s 5 & 6). Plaintiff filed a Motion to
21 File First Amended Complaint on March 26, 2013 (#38). On May 8, 2013, plaintiff filed the Request for
22 Voluntary Discovery Production (#45) and Motion For, And, To Compell[sic] Discovery (#46). The
23 Court entered an order on May 14, 2013, granting Plaintiff's motion to amend (#38), denying as moot
24 defendants' motions to dismiss (#'s 5 & 6), and ordering defendants to file and serve an answer to
25 plaintiff's amended complaint within forty-five days. (#48). On May 23, 2013, Defendants filed a

1 renewed Motion to Dismiss (#51). On May 31, 2013, Plaintiff filed a Response to the Motion to
2 Dismiss. (#53). Defendants Raul Diaz and D. Neven accepted service on June 4, 2013 (#55). The
3 Court entered a Discovery Scheduling on June 6, 2013. (#56). On June 7, 2013, Defendant Douglas
4 Gillespie filed his Answer to Amended Complaint (#57). On June 13, Plaintiff filed the Motion for
5 Limited Summary Judgment (#59); Motion for Appointment of Counsel(sic) and
6 Investigator/Consultant (#60); and Motion for Identification and Issuance of Summons (#61).
7 Defendants Diaz and Neven filed their Motion to Dismiss or, in the Alternative, Motion for Summary
8 Judgment on June 26, 2013. (#63). On July 8, 2013, Plaintiff filed a Motion to Extend Time to
9 Respond to Motion to Dismiss or in the Alternative, Motion for Summary Judgment (#67) and a Motion
10 to Serve Defendants' Complaint/Amended Complaint and Summons (#68).

11 **II. Motion for Appointment of Counsel(sic) and Investigator/Consultant (#60).**

12 Plaintiff has filed a motion seeking appointment of counsel. (#60). A litigant in a civil rights action
13 does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349,
14 13253 (9th Cir. 1981).

15 The court may appoint counsel under 28 U.S.C. § 1915 only under exceptional circumstances.
16 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). "A finding of exceptional circumstances
17 requires an evaluation of both the likelihood of success on the merits and the ability of the petitioner to
18 articulate his claims *pro se* in light of the complexity of the legal issues involved. Neither of these
19 factors is dispositive and both must be viewed together before reaching a decision." *Id.* (citations and
20 internal quotation marks omitted). In this case, plaintiff has demonstrated that he is capable of
21 adequately articulating his claims, and the facts alleged and issues raised are not of substantial
22 complexity.

23 In the instant case, the Court does not find exceptional circumstances that warrant the appointment
24 of counsel. The Motion for Appointment of Council is denied.

III. Motion for Identification, and/Issuance of Summons, for the Unserved Defendants (#61) and Motion to Serve Defendants' Complaint/Amended Complaint and Summons (#68).

In the Motion for Identification, and/Issuance of Summons, for the Unserved Defendants (#61) and Motion to Serve Defendants' Complaint/Amended Complaint and Summons (#68), Plaintiff seeks service of summons and amended complaint on:

Sergeant Kathryn Bussell
330 S. Las Vegas Blvd.
Las Vegas, Nevada 89101

and

Dwain Cotwright
22010 Cold Creek Rd.
Indian Springs, Nevada 89108

An incarcerated *pro se* litigant proceeding in forma pauperis must "be allowed the chance to serve defendants personally through the Marshal's Service." *Romandette v. Weetabix Co., Inc.*, 807 F.2d 309, 311 (2nd Cir. 1986); See also 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process, and perform all duties in such cases."). The Court finds that ordering the U.S. Marshal to serve Defendants Sergeant Kathryn Bussell and Dwain Cotwright is appropriate.

Accordingly,

IT IS HEREBY ORDERED that Motion for Appointment of Counsel(sic) and Investigator/Consultant (#60) is DENIED.


IT IS FURTHER ORDERED that Motion for Identification, and/Issuance of Summons, for the Unserved Defendants (#61) and Motion to Serve Defendants' Complaint/Amended Complaint and Summons (#68) are GRANTED.

IT IS FURTHER ORDERED that the Clerk of the Court will make two copies of the Amended Complaint (#49), issue summons to defendants (1) Sergeant Kathryn Bussell, 330 S. Las Vegas Blvd.,

1 Las Vegas, Nevada 89101; and, (2) Dwain Cotwright, 22010 Cold Creek Rd., Indian Springs, Nevada
2 89108, then deliver the same to the U.S. Marshal for service, and send two blank copies of the USM-285
3 form to the Plaintiff.

4 IT IS FURTHER ORDERED that the Plaintiff will have twenty (20) days to furnish to the U.S.
5 Marshal the required USM-285 form. Within twenty (20) days after Plaintiff receives copies of the
6 completed USM-285 forms from the U.S. Marshal, Plaintiff must file a notice with the court stating if
7 defendants Sergeant Kathryn Bussell and Dwain Cotwright were served. If the Plaintiff wishes to have
8 the U.S. Marshal attempt service again on defendants Sergeant Kathryn Bussell and Dwain Cotwright,
9 then a motion must be filed with the court.

10 DATED this 9th day of August, 2013.



CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE